IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

WP(C).No. 12768 of 2006(T)

PETITIONER:

C.MANOHARAN, S/O.T.K.KUTTIKRISHNAN NAIR,
GENERAL MANAGER, (MARKETING AND PERSONNEL,
KERALA STATE WAREHOUSING CORPORATION, HEAD OFFICE,
ERNAKULAM, P.B.NO.1727, WAREHOUSING CORPORATION
ROAD, COCHIN 682 016.

BY ADV. SRI.P.N.RAVINDRAN

RESPONDENTS:
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1. **THE KERALA STATE WARE HOUSING**
   CORPORATION, HEAD OFFICE, ERNAKULAM, P.B.NO.1727,
   WAREHOUSING CORPORATION ROAD,. COCHIN 682 016,
   REPRESENTED BY ITS MANAGING DIRECTOR.

2. **THE STATE OF KERALA, REPRESENTED BY THE**
   SECRETARY TO GOVERNMENT, AGRICULTURE
   DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

BY ADV. SRI.N.D.PREMACHANDRAN
SRI.MAJNU KOMATH, SC, K.S.W.C.
ADDL.ADV.GENERAL SRI.VENGANOOR CHANDRASEKHARAN NAIR,

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/05/2007, ALONG WITH WPC NO. 11014 OF 2007 AND CONNECTED CASES THE COURT ON 06/06/2007 DELIVERED THE FOLLOWING:

W.P.(C) NO.12768/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE LETTER DT.24.1.02 SENT BY THE ASSISTANT SECRETARY, WEST BENGAL STATE WAREHOUSING CORPORATION TO THE MANAGING DIRECTOR, KERALA STATE WAREHOUSING CORPORATION.

EXT.P1(a):- COPY OF THE LETTER DT.24.1.02 SENT BY THE MANAGING DIRECTOR, BIHAR STATE WAREHOUSING CORPORATION TO THE MANAGING DIRECTOR, KERALA STATE WAREHOUSING CORPORATION.

EXT.P1(b):- COPY OF THE LETTER DT.29.1.02 SENT BY THE CHAIRMAN-CUM-MANAGING DIRECTOR, TAMIL NADU WAREHOUSING CORPORATION TO THE MANAGING DIRECTOR, KERALA STATE WAREHOUSING CORPORATION.

EXT.P1(c):- COPY OF THE LETTER DT.30.1.02 SENT BY THE ASSISTANT MANAGER (PERSONNEL), M.P.STATE WAREHOUSING CORPORATION TO THE MANAGING DIRECTOR, KERALA STATE WAREHOUSING CORPORATION.

EXT.P1(d):- COPY OF THE LETTER DT.23.1.02 SENT BY THE JOINT MANAGING DIRECTOR & SECRETARY, MAHARSHTRA STATE WAREHOUSING CORPORATION TO THE MANAGING DIRECTOR, KERALA STATE WAREHOUSING CORPORATION.

EXT.P1(e):- COPY OF THE LETTER DT.13.2.02 SENT BY THE GENERAL MANAGER (ADMINISTRATION), UTTAR PRADESH STATE WAREHOUSING CORPORATION TO THE MANAGING DIRECTOR, KERALA STATE WAREHOUSING CORPORATION.

EXT.P1(f):- COPY OF THE LETTER DT.29.1.02 SENT BY THE MANAGING DIRECTOR, A.P. STATE WAREHOUSING CORPORATION TO THE MANAGING DIRECTOR, KERALA STATE WAREHOUSING CORPORATION.

EXT.P1(g):- COPY OF THE LETTER DT.29.1.02 SENT BY THE SECRETARY , ORISSA STATE WAREHOUSING CORPORATION TO THE MANAGING DIRECTOR, KERALA STATE WAREHOUSING CORPORATION.

EXT.P2:- COPY OF THE RESOLUTION DT.15.3.02 ADOPTED BY THE BOARD OF DIRECTORS OF THE KERALA STATE WAREHOUSING CORPORATION.

EXT.P3:- COPY OF THE LETTER DT. 29.3.06 SENT BY THE MANAGING DIRECTOR, KERALA STATE WAREHOUSING CORPORATION TO THE SECRETARY TO GOVERNMENT, AGRICULTURE DEPARTMENT.

EXT.P4:- COPY OF THE RELEVANT PORTIONS OF THE REPORT OF THE 8TH PAY REVISION COMMITTEE.

EXT.P5:- G.O.(MS) NO.82/03/H. EDN. DT.20.6.03.

EXT.P6:- COPY OF THE INTERIM ORDER DT.31.8.05 PASSED BY THIS HONOURABLE COURT IN WP.(C) NO. 25579/05.

EXT.P7:- COPY OF THE LETTER DT.17.7.06 SENT BY THE SECRETARY TO GOVERNMENT AGRICULTURE DEPARTMENT, TO THE MANAGING DIRECTOR, KERALA STATE WAREHOUSING CORPORATION.

RESPONDENTS EXHIBITS

EXT.R1(a):- COPY OF THE RESOLUTION NO.2586 OF THE BOARD OF DIRECTORS OF THE 1ST RESPONDENT CORPORATION HELD ON 29.3.07.

THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).Nos.12768/2006-T, 20032/2006-I,

23257/2006-R, 26009/2006-U, 27858/2006-N,

2776/2007-E, 4985/2007-R, 9723/2007-G,

10534/2007-D & 11014/2007-J

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Dated this the 6th day of June, 2007.

JUDGMENT

These writ petitions are filed seeking a declaration that the employees of the Kerala State Warehousing Corporation are entitled to continue in service, till attainment of the age of 58 years, in terms of the decision of the Board of Directors of the Corporation minuted as taken in its 240th meeting on 15-3-2006.

2. The Kerala State Warehousing Corporation, hereinafter, the "Corporation", for short, is established under Section 18 of the Warehousing Corporations Act, 1962, the "Act", for short. General and Staff Regulations

have been issued by the Corporation on 18th June, 1964 and published in the Gazette dated 23-6-1964, with the title "Kerala State Warehousing Corporation Regulations 1963", the "Regulations", for short, in exercise of power under Section 42(1) of the Act, with the previous sanction of the Government of Kerala. Regulation 13 of the Regulations provides that every employee shall retire on attaining the age of 55 years. This provision as to age of superannuation does not affect the power of the Corporation to employ any person above the age of 55 years on contract. The Board of Directors may with the previous permission of the Government, extend the period of service of an employee beyond the age of superannuation for such period as may be considered necessary but not exceeding three years. Obviously, such extension is a need-based one, to be made on case to case basis.

3. The Board of Directors of the Corporation decided on 15-3-2006, by a majority, to enhance the retirement age of the employees of the Corporation from 55 years to 58 years.

The Board also resolved to authorise the Managing Director to write to the Government about the Board's recommendation to enhance the retirement age of the employees and for making necessary amendments to the Regulations. The Government by communication dated 17-7-2006 informed the Managing Director of the Corporation that it regrets its inability to concur with the proposal for enhancement of retirement age of the servants of the Corporation from 55 to 58. The proposal contained in the letter of the Managing Director was accordingly rejected by the Government.

4. The petitioners contend that the communication of the Government to the Corporation is a non-speaking one and does not set out any reason to decline approval. The State Government, according to the petitioners, has not considered the relevant aspects while taking the decision to refuse concurrence to the proposal to enhance the age of superannuation. According to the petitioners, the decision of the Government is one taken mechanically and without due application of mind. It is further argued on behalf of the

petitioners that though the Act provides for previous sanction of the Government for the making of the regulations, it has to be treated that such previous sanction is necessary only when the Corporation proceeds to make a regulation touching a matter, for the first time, and not when it makes regulations thereafter touching matters already dealt with by the existing regulations, even by making amendments to them. It is further contended by the petitioners that the retirement age of employees of various Warehousing Corporations in different States, as also different other organisations in the State of Kerala in which the State Government has control, is 58 years and there is no room, rhyme or reason to peg the retirement age of the employees of the Corporation at 55 years and such situation results in hostile discrimination and amounts to classification with no intelligible differentia. It is contended that the situation violates Articles 14 and 16 of the Constitution.

5. The Corporation has filed a counter affidavit (adopted in the different matters) refuting the contention of

the petitioners that the intervention of the State Government is not necessary to amend the Regulations. It is contended that the State Government had refused to approve the recommendation of the Board to enhance the retirement age. Going by that counter affidavit, it is the conceded position that the retirement age of the employees of the Central Warehousing Corporation and different State Warehousing Corporations such as that of West Bengal, Bihar, Tamil Nadu, Madhya Pradesh, Uttar Pradesh, Maharashtra, Andhra Pradesh, Orissa etc. is 58 years and that it was in consonance with that, that the resolution dated 15-3-2006 to enhance the retirement age of the employees of the Corporation from 55 to 58 was made. By supplementary pleadings, it has been brought on record by the Corporation that after the Government refused sanction for the proposed enhancement of the retirement age, the Board of Directors of the Corporation met and resolved to withdraw the resolution dated 15-3-2006 and therefore, as of now, there is no decision of the Corporation to enhance the age of retirement from 55 years to 58 years.

6. The State Government has filed counter affidavit contending that while the age of superannuation in the service of the Central Warehousing Corporation is 58 years, the employees of that institution have no pensionary benefits and that the retirement age of different institutions in the control of the State Government, as pleaded by the petitioners, though is 58 years, the decision of the State Government to refuse sanction to the Corporation to enhance the age of superannuation of its employees has been taken on a careful examination and consultation with the Finance Department and Planning & Economic Affairs (BPE) Department, which are the controlling Departments in Government for fixation and formulation of Rules, Regulations etc. in respect of Public Sector Undertakings in the State. It is contended by the State Government that it is the policy decision that the enhancement of retirement age in the Corporation will be a bad precedent for other Public Sector Undertakings in the State. It is pointed out that the Government is not in a position to accord sanction to the Corporation to raise the retirement age of its employees from 55 to 58 because if the Government is to accord such

sanction, Government has to face similar request from other Public Sector Undertakings. It is also contended that there is a large section of educated unemployed youth in the State of Kerala and the enhancement of retirement age from 55 to 58 will deprive them of employment opportunities, by delaying their chances by three years. It is further contended that providing similar service conditions between the employees of the Corporation and the employees of other Government institutions is a policy matter of the State Government and that it cannot be conceded to.

7. In the light of the pleadings and the arguments advanced, the following issues arise for consideration:

I. Is the Corporation entitled to amend the Regulations enhancing the retirement age of the employees of the Corporation without the previous sanction of the Government?

II. Is the decision of the Government to refuse

sanction to the Corporation to amend the Regulations by enhancing the age of superannuation of its employees justiciable? What, if any, are the limits of judicial review of such decision? Is the impugned decision of the Government sustainable or liable to be set aside on judicial review? If not, does the pegging of the retirement age of the employees of the Corporation at 55 years as per Regulation 13 of the Regulations amount to hostile discrimination? What is the legal effect of Resolution No.2525 dated 15-3-2006? Are the petitioners entitled to the declaration sought for?

Issue No. I:

8. Section 23(2) of the Act provides that every employee of the Corporation is subject to such conditions of service and shall be entitled to such remuneration as may be determined by regulations made by the Corporation.

9. Section 42 of the Act provides and regulates the power of the Corporation to make regulations. It reads as follows:

> "42.(1) A Warehousing Corporation may, with the previous sanction of the appropriate Government, by notification in the Official Gazette, make regulations not inconsistent with the Act and the rules made thereunder to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.
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> (2) In particular, and without prejudice to the generality of the foregoing power, such regulation may provide for-
>
> (a) the conditions of service of, and the remuneration payable to, the officers and other employees of a Warehousing Corporation;
>
> (b) the manner in which, and the conditions subject to which, shares of the Central Warehousing Corporation may be transferred;
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> (c) the manner in which meeting of a Warehousing Corporation and the Executive Committee thereof shall be convened, the fees for attending such meetings and the procedure to be followed thereat;
>
> (d) the duties and conduct of officers and employees of a Warehousing Corporation;
>
> (e) the powers and duties which may be entrusted or delegated to the Managing Director of a Warehousing Corporation;

(f) generally, the efficient conduct of the affairs of a Warehousing Corporation.

(3) The appropriate Government may, by notification in the Official Gazette, rescind any regulation which it has sanctioned and thereupon the regulation shall cease to have effect."

10. Section 42 of the Act provides that the Corporation may make regulations with the previous sanction of the appropriate Government, which, in the case of a State Warehousing Corporation, is the State Government. Without prejudice to the generality of the power to make regulations as enjoined in sub-section (1) of Section 42, it is particularly provided in clauses (a) and (b) in sub-section (2) of Section 42 that such regulation may provide for conditions of service of the officers and other employees of the Corporation, as also the duties and conduct of officers and employees of the Corporation. Sub-section (3) of Section 42 provides power to the Government to rescind any regulation which it has sanctioned. Such rescission has to be by notification in the Official Gazette and thereupon, the regulation that has been rescinded shall cease to have effect.

11. Sections 14(1) and 21 of the General Clauses Act, 1897, which are relevant, read as follows:

> "**14. Powers conferred to be exercisable from time to time**.- (1) Where, by any Central Act or Regulation made after the commencement of this Act, any power is conferred, then unless a different intention appears, that power may be exercised from time to time as occasion requires."
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> "**21. Power to issue, to include power to add to, amend, vary or rescind notification, orders, rules or bye-laws**.- Where, by any Central Act or Regulation, a power to issue notification, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."

Going by Section 14(1) of the General Clauses Act, unless a different intention appears on the face of the empowering Act, any power conferred by it may be exercised from time to time, as occasion requires. Section 21 of the General Clauses Act advises that when the Corporation is empowered as per Section 42, to make a regulation, that power includes the power to add to, amend or vary such regulation, but such

power has to be exercised in the like manner and subject to the like sanction and conditions, if any. So much so, the power of the Corporation to make regulations under Section 42 of the Act includes the power to amend, add to, or vary the existing Regulations, however that the power to so amend, add to, or vary, can be exercised only in the manner prescribed and subject to the sanction/conditions for making the regulations. Since previous sanction of the appropriate Government is necessary in terms of Section 42(1) to make regulations, the amendment to the Regulations can be made only with the previous sanction of the appropriate Government, the State Government, in the case in hand. While the power to make the regulations includes the power to amend, such power to amend can be exercised only with the previous sanction of the Government. There is nothing on the face of Section 42 that supports the contention on behalf of the petitioners that previous sanction of the Government is required only when the regulation touching a particular matter is being made for the first time and such sanction is unnecessary to amend an existing regulation. There is, therefore, no warrant to read

any limitation into Section 42 to hold that the previous sanction of the Government is required only while a regulation is made for the first time and not when the regulation is being amended.

12. So much so, the Corporation cannot amend its Regulations without the previous sanction of the appropriate Government. Issue No.I is answered against the petitioners.

Issue No.II:

13. Section 42(1) of the Act, as already noticed, enjoins the making of regulations to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of the Act. Those regulations shall not be inconsistent with the Act and the rules made thereunder. The authority to make the regulations is vested in the Corporation. The making of the regulations, that is to say, the bringing into force of the regulations, is to be by notification in the Official Gazette. That notification is to be issued by the

Corporation. The statute, thus, confers the regulation-making power on the Corporation. The statute directs that such regulations shall be made to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of the Act. Section 23(2) of the Act further emphasises the fact that the authority to make regulations is vested in the Corporation. It is not as if the appropriate Government, namely, the State Government in the instant case, makes the regulations for the Corporation. By Section 18(2), the Corporation is a body corporate with perpetual succession and common seal and is a juristic person. The power to make regulations relating to conditions of service is attendant to the power to appoint officers and other employees as are necessary for the efficient performance of the Corporation, which authority is vested in the Corporation by virtue of sub-section (1) of Section 23. The appointment of officers and other employees and thereby engaging necessary personnel for the efficient performance of the Corporation are part of the actions to be taken by the Corporation, which acts through the Board of Directors, subject, of course, to any

delegation of power which the Board may make. Section 20(4) enjoins that the Board shall act on business principles having regard to public interest and is to be guided by such instructions on questions of policy as may be given by the State Government or the Central Warehousing Corporation. Thus, the action of the Board of Directors is of primary value in the matter of framing the regulations. The requirement of a particular regulation, its content etc. are matters left primarily to the Corporation. Therefore, once a Board of Directors of a Corporation decides to make a regulation in terms of Section 42 and if it is not in violation of the Act and the rules made thereunder or contrary to any business principle, having regard to public interest, the Corporation has the legal authority to insist on the issuance of such regulation by it. This is subject, of course, to the previous sanction of the Government, going by Section 42(1). So construing, the concept of "previous sanction" by the State Government cannot be treated as one that is of a plenary nature, letting the State Government impose its views, whatever that be, on the Corporation. The object sought to be achieved by providing a

device in Section 42(1) as to “previous sanction” of the Government, is to provide a stage of check, to ensure that the regulation that the Corporation intends to make is consistent with the Act and the rules made thereunder and to ensure that it is regarding a matter for which provision is necessary or expedient for the purpose of giving effect to the provisions of the Act. That the requirement to prescribe the age of superannuation for the officers and employees of the Corporation is a matter for which provision is necessary and expedient, is explicit and indisputable from the fact that such a provision has been made in Regulation 13 of the Regulations, even as they were originally made and issued in 1964. Once the necessity and expediency of such a provision is thus explicit, while making further amendments to that provision by enhancing or rolling back the age of superannuation, what would predominantly prevail is the policy of the Corporation which has to be consistent with the Act and the rules made thereunder and going by Section 20(4), in accordance with business principles, having regard to public interest. It has also to be in consonance with the constitutional mandates for

the simple reason that the Corporation is “State” for the purpose of Article 12 of the Constitution of India and is a statutory body and the statute is made for uniform application to the whole of India, going by Section 1(2) of the Act.

14. It is the undisputed, rather admitted, fact that the State Warehousing Corporations of Bihar, Tamil Nadu, Madhya Pradesh, Maharashtra, Uttar Pradesh, Andhra Pradesh and Orissa have prescribed the age of superannuation of their respective employees as 58 years. The Central Warehousing Corporation has also prescribed 58 years as the age of retirement for its employees. The West Bengal State Warehousing Corporation has fixed the age of superannuation of all categories of its employees as 60 years. In Tamil Nadu Warehousing Corporation, the age of retirement of employees falling under Categories A, B and C is 58 years and for employees falling under Category D is 60 years. In Madhya Pradesh State Warehousing Corporation, while the age of retirement of Classes I to III employees is 58 years, it is 60 years of age for Class IV employees. In Uttar Pradesh State

Warehousing Corporation, Classes I and II employees have the age of retirement fixed at 58 years and that of Class III employees is 60 years. In Orissa State Warehousing Corporation, the age of retirement of all categories of employees is 58 years and there is a proposal to enhance the age of retirement to 60 in the case of Grade IV employees. All these are facts evidenced by the documentary evidence in this batch of cases. It is also the evidence that all these facts were available with the Board of Directors of the Corporation when it decided on 15-3-2006 to enhance the retirement age of the employees of the Corporation from 55 years to 58 years.

15. The State Government does not have any financial liability in the matter of disbursing the pay, allowances and pensionary benefits of the employees of the Corporation. The Corporation has issued the Kerala State Warehousing Corporation Employees' (Pension and other Retirement Benefits) Regulations, 1998. Those Regulations also, obviously, show that the Government has no financial commitment in the matter. The Central Warehousing

Corporation holds 50% of the shares in the Kerala State Warehousing Corporation. While the employees of the Central Warehousing Corporation have the retirement age at 58 years, the State Warehousing Corporation employees have to retire at the age of 55 years, if the stand of the Government is to be accepted. It is reasonable and in tune with the doctrine of equality contained in Articles 14 and 16 of the Constitution of India to hold that the employees under different institutions, constituted with the same object, in the different States within the whole of India, to which the Act applies, are to be considered as similarly situated. It is well within the authority of the Corporation to take a policy decision to enhance the superannuation age already fixed under the Regulations. It is crystal clear that the decision to enhance was taken by the Board of the Corporation after adverting to and considering all relevant facts and factors, including the comparable status of the employees of the different State Warehousing Corporations, regarding age of superannuation.

16. The Government, as the authority to grant previous

sanction, does not have a case in opposition to these writ petitions that the resolution of the Board of Directors on 15-3-2006 for enhancement of the retirement age of the employees was beyond the authority of the Board or mala fide or for any other reasons which could be attributed to assail such a decision by a duly competent and authorised Board of Directors. It is also worthwhile to immediately notice that such enhancement in the age of superannuation is not in violation of the Act and the rules made thereunder. It is not in violation of any instruction of the Central Warehousing Corporation, whose employees themselves have the retirement age fixed as 58 years. The Government does not have a case that the Board's decision was taken without taking into consideration any of the facts or factors relevant for such decision. The larger interest of the employees of the Corporation and the business interest of the Corporation are not alleged to have been sacrificed. If that be so, can the requirement of previous sanction of the Government be treated as an opportunity for the Government to impose on the Corporation its decision to negative the proposal without

finding any reason which is referable to the institution in relation to which such a decision is taken? Such a power cannot be conceded to. This is because, if that were so, the status of the Corporation as a juristic person, as a body corporate with a common seal and its existence would be scuttled and become subservient to the dictates of the Government, as if the Corporation is a department in the Government. This is, plainly, impermissible.

17. Now, I shall examine the defence of the Government, pleaded in support of its refusal to grant sanction. While it concedes to have issued orders regarding other autonomous bodies, like LBS Centre and other Government Companies, the plea of the Government is that the Government is not in a position to accord sanction to the Corporation to raise the retirement age of its employees from 55 years to 58 years because of the fact that if the Government is to accord sanction for that, the Government has to face similar request from other Public Sector Undertakings. This defence is unsustainable. It further establishes that the

Government found no other reason to refuse previous sanction, but for this reason, which is not found stated in the communication from the Government, but is now afforded through the counter affidavit. The said reason is a perverse and arbitrary one which ought not to emanate from any reasonably advised administrative authority or policy maker. Even if the stage of granting previous sanction under Section 42(1) of the Act is the situs of a policy-making by the Government, the policy for the Corporation is to be taken with reference to facts which are germane to it, its administration, its employees and its context and purpose of constitution, vis-a-vis other similar institutions through the length and breadth of the Nation created under the same statute. Certain legal situations may also be germane. However, to say that if the Government agrees for enhancement of the retirement age of the employees of the Corporation, other Public Sector Undertakings may come forward with such a proposal, is nothing but meekness, with no constitutional or legal foundation. That is an irrelevant factor even for a policy decision touching the Corporation.

18. Yet another reason that has been pointed out and insisted upon by the learned Additional Advocate General during the course of hearing is that any decision to enhance the age of superannuation will adversely affect the unemployed educated youth of Kerala who are stated to be in large numbers. The plea is that if the age of superannuation of the employees of the Corporation is increased by three years, those aspiring to enter the service of the Warehousing Corporation will have to wait for another three years. No data, whatsoever, is placed on record in support of that argument. Not only that, the same is no legally sustainable reason for the Government to refuse previous sanction to the Corporation to amend the Regulations enhancing the retirement age of the employees. If I were to take it as a matter of judicial notice, I would also take it that, it is not unoften that writ petitions are filed before this Court by those in the ranked lists published by the Public Service Commission, seeking directions to the different Departments in the Government and the appointing authorities to report existing vacancies to the Public Service Commission so that those educated unemployed youth of

Kerala can enter Government service during the currency of a ranked list to which they belong. It is also not out of place to take judicial notice of the fact that rare are not the situations when writ petitions are filed before this Court complaining about vacancies being held back from being filled from the ranked lists on account of temporary promotions being made over and above the permissible quotas in terms of the quota rules and the rota rules in matters of recruitment.

19. Having found that the objection of the State Government and the reasons stated by it for refusing sanction are not referable to, or admissible to the situation in hand, it has to be immediately noted that neither the Government nor the Corporation has a case that the employees of the Kerala State Warehousing Corporation and the other State Warehousing Corporations are persons to be treated differently in the matter of fixation of the age of superannuation, at least, after good many of such Corporations have fixed 58 years as the age of superannuation of their employees and the Board of the Kerala State Warehousing

Corporation had adverted to and considered such materials and decided to enhance the age of superannuation of its employees from 55 years to 58 years. While it may be a matter of policy, having found that the said policy decision has been taken by the Corporation and having found that there is no reason to sustain the refusal of the Government to grant previous sanction to the Corporation to amend the service Regulations in terms of the decision of the Corporation taken in that regard on 15-3-2006 in 240th meeting, it has to be held that the petitioners are entitled to a declaration that the age of retirement of the employees of the Corporation shall be fixed as 58 years in terms of the said decision of the Board of Directors.

20. This leads to an incidental issue that has arisen during the pendency of these writ petitions. It is a matter of record that the writ petitions were admitted and interlocutory orders were issued letting the petitioners continue in service. One of those orders, namely, the order dated 12-5-2006 in WP (C).No.12768/2006, was issued after noticing the submission

on behalf of the Corporation that the Board of the Corporation had resolved to enhance the age of superannuation and as such, the Corporation has no objection in allowing the petitioners to continue in service. However, following the impugned Government decision and during the pendency of these writ petitions, the Board resolved in 243rd meeting on 29-3-2007 to cancel the Board resolution dated 15-3-2006 and to authorise the Managing Director to file affidavit before this Court stating that fact and seeking to vacate the interim orders. The minutes of that meeting dated 29-3-2007 is also placed on record along with the interlocutory applications. The only reason for the Board to cancel the resolution dated 15-3-2006 is that the State Government had rejected the proposal to enhance the retirement age from 55 years to 58 years and because of that, the Corporation cannot implement that decision. For one thing, the sustainability or otherwise of the Government decision to refuse previous sanction for the amendment to the Regulations following the Board decision dated 15-3-2006 was a matter that is sub judice in these writ petitions. This Court had passed interlocutory orders to

govern the parties for the interregnum. It has been found above that the decision of the Government to refuse previous sanction is unconstitutional and unsustainable. The Board resolution dated 25-3-2007 recalling the Board resolution dated 15-3-2006 touching the enhancement of the retirement age of the employees of the Corporation, therefore, has no legal or constitutional legs to stand. It falls. It stands nullified hereby.

In the result, these writ petitions are allowed in the following terms:

i. The decision of the Government of Kerala communicated to the Managing Director of the Kerala State Warehousing Corporation as per Letter No.9816/PU2/06/AD dated 17-7-2006 is quashed.

ii. It is declared that the Government of Kerala had no reason to refuse previous sanction for the Kerala State Warehousing Corporation to amend the

Kerala State Warehousing Corporation Regulations 1963 in terms of its Board Resolution No.2525 dated 15-3-2006.

iii. Resolution No.2586 of the Board of Directors of the Kerala State Warehousing Corporation in its 243rd meeting on 29-3-2007 is quashed.

iv. It is declared that the age of superannuation of the employees of the Kerala State Warehousing Corporation shall be 58 years, and it shall be fixed in terms of Resolution No.2525 dated 15-3-2006.

v. The Kerala State Warehousing Corporation and the Government are directed to publish the amendment to the Kerala State Warehousing Corporation Regulations 1963 in terms of the aforesaid declaration.

Sd/-
THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-